

DEC 22 1978

In The
Supreme Court of the United States
October Term, 1978

MICHAEL GUDAK, JR., CLERK

— 0 —
No. 78-505
— 0 —

BRIAN BRAESCH, a minor by DELBERT BRAESCH,
his father and next friend;

CHARLES MEYER and CHERYL MEYER, minors,
by FLOYD MEYER, their father and next friend;

TAMMY VIE, a minor, by GORDON VIE, her father
and next friend;

STUART YOUNG, a minor, by MARY B. YOUNG,
his mother and next friend;

Petitioners,

vs.

DANIEL DePASQUALE; WILLIAM H. MINCHOW;
ROBERT KREMPKE; ELOISE HIEMKE; the SCHOOL
DISTRICT OF ARLINGTON, in the County of Wash-
ington, in the State of Nebraska; and THE BOARD OF
EDUCATION of the School District of Arlington, in the
County of Washington, in the State of Nebraska, said
Board consisting of ROBERT PFEIFFER, LAUREN
SPANGLER, RUPERT HLIGENKAMP, ALBERT A.
SIBBERNSEN, RAY HARMON, LEE NIELSEN,

Respondents.

— 0 —
**PETITIONERS' REPLY BRIEF TO RESPONDENTS'
BRIEF IN OPPOSITION TO PETITION FOR A WRIT
OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF NEBRASKA**
— 0 —

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December 20, 1978.

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QUESTIONS PRESENTED

Petitioners address the issue of mootness raised by
the Respondents' brief in opposition to the petition for
writ of certiorari.

—o—

ARGUMENT

Respondents in their brief assert as new matter that this court lacks jurisdiction in that the matter and controversy is now moot.

This appeal involves a live and continuing controversy and is therefore not moot.

Respondents' present position is diametrically opposed to that taken by the Respondents in the Supreme Court of Nebraska.

There are three reasons why the Respondents' position in this Court is not well taken.

1. The reputations of the students have been damaged by the findings under the Nebraska opinion.

2. The distinctions made as to constitutional rights, by the Nebraska Court, between athletic activities and academic activities is a question of national interest not heretofore dealt with by this Court.

3. The Nebraska Court rests its opinion on a waiver of due process by a minor or a minor's parents which has created an issue of law of far-reaching effect.

Prior to the opinion of the Nebraska Court, there had been no finding nor spreading on the record of any admission of guilt nor consideration or adjudication resting on an application of a doctrine of waiver. While at the time of the appeal from the trial court there could well have been a finding that the question was moot, the Nebraska Supreme Court opinion in and of itself confers jurisdiction on this court. Until the publication of the Court's opin-

ion the names and reputations of the students had not been tarnished or injured. The opinion established an unfavorable record as to the students without due process. As was held in *Roach v. Plainview School District*, Case No. CV77-L-117 (D. C. Neb. Urbom, J., December 4, 1978), the person charged or accused deserves a chance to clear his or her name. Moreover, this Court has recognized that "... where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." *Wisconsin v. Constantineau*, 400 U. S. 433, 437, 91 S. Ct. 507, 510 (1971). This right to clear one's name is a property right. It was this property right which the students did not have an opportunity to protect in a fair and impartial hearing prior to or after the expulsion from the team.

Respondents state that at the meeting with the school principal there was no denial of guilt. Respondents failed to call to the attention of this Court that likewise there was no admission of guilt at that meeting. In fact, there was no discussion of the question at all. Additionally, Respondents' references in the Statement of the Case to opportunities for a hearing ignores the fact that whatever was tendered by the Respondents was tendered after the expulsion and after the Temporary Restraining Order had been issued by the trial court.

The problem created by the Nebraska opinion is that it made a finding that there had been admissions of guilt on a record completely devoid not only of such admissions but also devoid of any opportunity of the students to meet and deny or otherwise challenge the accusation.

An additional reason for this court to grant the Petition is inherent in the opinion of the Nebraska Supreme Court and is plainly set forth in the following excerpt: "Participation in interscholastic athletics ordinarily has significantly less important constitutional dimensions than does participation in traditional academic education." (Petitioners' Appendix Page 8).

This is an unusual concept and has not previously been before this Court.

Petitioners believe and assert that a constitutional right does not have dimensions. It either exists or it doesn't. It is not measured in size or degrees. It is not the right of an academic program or an athletic program. It is the right of the students involved. This is the right that Petitioners seek to protect.

Finally, the application of the doctrine of waiver by the Nebraska Supreme Court was discussed in the petition herein.

CONCLUSION

On the basis of the arguments and authorities presented in the petition for writ of certiorari and the arguments and authorities presented herein, the Petitioners respectfully submit that a writ of certiorari should be is-

sued to review the judgment and opinion of the Nebraska Supreme Court.

Respectfully submitted,

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